

4. Venue lies in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1391(b), (e)(1).

PARTIES

5. Plaintiff Maxim Healthcare Services, Inc. is a Maryland corporation headquartered in Maryland that provides home health and nursing staffing services in the United States.

6. Defendant Department of Justice is an “agency” within the meaning of 5 U.S.C. § 552(f). DOJ is the federal agency with possession of and control over the requested Report and is responsible for fulfilling Maxim’s FOIA request.

FACTUAL HISTORY

7. On or about September 12, 2011, Maxim and the DOJ entered into an agreement pursuant to which Maxim agreed to pay a total of \$121,511,694 plus interest to settle claims arising under the False Claims Act in the case titled *United States ex rel. West v. Maxim Healthcare Services, Inc.*, No. 04-4906 (D. N.J.) (the “Settled FCA Action”).

8. DOJ prepares a document called a Civil Fraud Disposition Report at the conclusion of each case arising under the False Claims Act. The Civil Fraud Disposition Report reflects how settlement or judgment funds for a particular case are allocated and identifies the amount of such funds that constitutes penalties. For example, paragraph 8 of the Civil Fraud Disposition Report reflects the amount of funds allocated to the Health Care Control Account. The Health Care Control Account was established to receive funds that constitute penalties paid to the federal government (not the states) under the False Claims Act.

9. By letter dated October 24, 2011, Maxim submitted a request to DOJ for a copy of the Civil Fraud Disposition Report specifically pertaining to the Settled FCA Action (the

“FOIA Request”). A copy of Maxim’s FOIA Request (without the enclosure) is attached hereto as Exhibit 1.

10. Maxim submitted its FOIA Request to obtain information to determine the deductible portion of the settlement payments for federal income tax purposes and secure information that DOJ’s Civil Division routinely shares with the Justice Management Division and the Internal Revenue Service (“IRS”).

11. In order for Maxim to comply with federal income tax laws and have the information it needs to most accurately report its taxes, it must determine the amount of the settlement pertaining to the Settled FCA Action that is compensatory and the amount, if any, that constitutes a penalty. For income tax purposes generally, a penalty paid to a government agency is not deductible, while payments made to a government agency to compensate for losses are deductible.

12. Obtaining a copy of the Report is the only means for Maxim to determine the amount of the settlement that constitutes a penalty.

13. By letter dated February 3, 2012, DOJ produced the Report, but redacted monetary amounts reflected on the document. DOJ redacted monetary amounts for “Single Damages,” the “Health Care Control Account,” investigative costs, and other allocations. Copies of DOJ’s February 3, 2012 letter and the redacted Report are attached hereto as Exhibit 2.

14. DOJ stated in its February 3, 2012 letter that it redacted the Report based on 5 U.S.C. § 552(b)(5) to protect attorney work product and pre-decisional deliberative process.

15. The redacted amounts on the Report do not constitute attorney work product and are not pre-decisional. The Report is a disposition report that DOJ prepared and signed approximately two weeks *after* the parties negotiated and executed the settlement agreement.

16. By letter dated November 23, 2011, in response to a separate FOIA request, DOJ provided to Maxim an “FMIS Debt Management Module Receipt and Payment Detail Report” (“FMIS Report”). The FMIS Report contains information that is the same or substantively similar to the redacted information on the Civil Fraud Disposition Report, except that it pertains to the disposition of a single payment to the federal government made by Maxim under the settlement agreement, which provides for 34 separate payments. The Civil Fraud Disposition Report includes the projected disposition of all 34 payments to the federal government. DOJ’s production of the FMIS Report establishes that the redacted information on the Civil Fraud Disposition Report either is not exempt from disclosure or that DOJ has waived any such exemption with respect to the Settled FCA Action. A copy of DOJ’s November 23, 2011 letter is attached hereto as Exhibit 3.

17. In accordance with the agency’s rules, on March 5, 2012, Maxim timely appealed DOJ’s February 3, 2012 response and its redactions on the Report. A copy of Maxim’s agency appeal is attached hereto as Exhibit 4.

18. DOJ’s Office of Information Policy rejected Maxim’s agency appeal by letter dated September 13, 2012. A copy of DOJ’s denial of Maxim’s agency appeal is attached hereto as Exhibit 5.

PLAINTIFF’S CLAIMS FOR RELIEF

COUNT I

(Violation of the Freedom of Information Act, 5 U.S.C. § 552)

19. Plaintiff re-alleges and incorporates by reference all preceding paragraphs.

20. On or about October 24, 2011, pursuant to and in compliance with the FOIA and applicable DOJ regulations, Plaintiff submitted to Defendant a letter requesting a copy of the Report.

21. Defendant possesses and has control of, or has a right and obligation to obtain, an unredacted copy of the Report.

22. Defendant has violated the FOIA by refusing to provide to Plaintiff an unredacted copy of the Report.

23. Plaintiff has exhausted all applicable administrative remedies with respect to Defendant's wrongful withholding and redaction of the requested Report.

24. Plaintiff is entitled to injunctive and declaratory relief with respect to the release and disclosure of an unredacted copy of the requested Report.

25. Defendant's refusal to produce an unredacted copy of the Report has injured Plaintiff because Plaintiff has been denied access to records to which it is entitled and is unable to have the information it needs to most accurately state its taxes without the Report. Plaintiff will continue to suffer injury until DOJ produces an unredacted copy of the Report.

REQUESTED RELIEF

WHEREFORE, Plaintiff hereby requests a Judgment:

- a. Declaring Defendant's withholding of an unredacted copy of the Report to be a violation of the FOIA;
- b. Declaring that Plaintiff is entitled to an unredacted copy of the Report;
- c. Enjoining Defendant from continuing to withhold an unredacted copy of the Report from Plaintiff;
- c. Ordering Defendant to produce an unredacted copy of the Report to Plaintiff;
- d. Awarding Plaintiff its reasonable attorneys' fees and litigation costs in this action pursuant to 5 U.S.C. § 552(a)(4)(E); and
- e. Granting such other relief as this Court deems just and proper.

Respectfully submitted,

/s/ T. Michael Guiffre

T. Michael Guiffre (D.C. Bar No. 465745)

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